

**NIGERIAN JOURNAL OF FOOD, DRUG AND
HEALTH LAW**

VOL.2, 2009.

ISSN: 2006-6902

**This journal may be cited as
NJFDHL Vol.2, 2009.**

**FACULTY OF LAW, KOGI STATE UNIVERSITY,
ANYIGBA – NIGERIA**

IDDAH-A RECEDING CONCEPT IN ISLAMIC LAW

BY
HAFSAT IYABO SA'ADU*

I. INTRODUCTION, DEFINITION AND CONCEPT OF IDDAH

Iddah period was known and practiced during the Jahliyyah¹ period. When Islam came, it adopted and modified it² This period of Iddah has been ordained by Allah (S.W.T.) in the Qur'an³.

In Islamic Law, it is obligatory to observe Iddah by women at the death or divorce by their husbands and this is unanimously agreed upon by the Jurists.⁴

Iddah can only be observed by a woman who is divorced or lost her husband if there is the establishment of a valid marriage between her and the husband in question.

However, the term Iddah literally means number or counting⁵. in Islamic Law, Iddah is a waiting period of women who are separated from their husbands due to death or divorce before engaging in any other marital relationship.⁶ It is for three months in the case of divorce and four months and ten days in the case of the death of the husband.⁷

The prescribed period of Iddah is counted based on either menstrual periods or periods of cleanliness.⁸ There are divergent views by the scholars on the method of counting the prescribed Period of Iddah.⁹ But the unanimous opinion is that she begins the counting in either period of *Tuhr* (purity) or period of *Haidah* (impurity).¹⁰ Both Imams Maliki and Shafi'i hold the view that a divorced woman should count the period of *Tuhr* (purity) and not the period of bleeding.¹¹ This is to say that the counting should be based on the period of cleanliness when a woman is free from impurity (*haidah*).

Islamic law enjoins a woman to observe her Iddah in her marital house until the expiration of her Iddah period. It is therefore unlawful to observe it elsewhere except if she is exposed to danger¹² and in case of Iddah of divorce; the husband is enjoined not to force her out except if she commits lewdness.¹³ In Iddah, a woman is entitled to maintenance by the husband.¹⁴

* Lecturer, Faculty of Law, University of Ilorin.

¹ Period of ignorance

² As-Sayyid Sabiq (1996), *Fiqh Us-Sunnah*, Rendered into English by F. Amira Zrein Matraji, Dar El Fikr, Beirut, Vol. III, p.196

³ Al-Qur'an 2:234-235

⁴ Imam Abdul-Walid Muhammad Al-Qurtabi (1425-1426/2005), *Bida'ayat al-Mujtahid wa Nihayat ul-Muqtsid*, Dar El Fikr, Beirut, Vol II, p.100.

⁵ Abdul Rahman Al-Jazairi (ND), *Fiqhul-Ala Madahibul Arbah*, Al-Maktab Al-Thaqafy Publishing & Distributing, Cairo, vol. IV, p.381

⁶ Ibid

⁷ Al-Qur'an 2:228, 2:234.

⁸ Abdul Rahman Al-Jazairi, op. cit.,

⁹ Ibid

¹⁰ As-Sayyid Sabiq (ND), *Fiqh Us-Sunnah*, Darul Thurath, Cairo, Vol. II, p. 209.

¹¹ Abdul Rahman Al-Jazairi, op. cit.,

¹² Ibid

¹³ Al-Qur'an 65:1, As-Sayyid Sabiq. (1996), op. cit., p. 205.

¹⁴ Al-Qur'an 2:241, Ibid

During the Iddah period widows or divorced women are not allowed to enter into a new marriage until the stipulated period expires.¹⁵ The Holy Qur'an prohibits a woman observing her Iddah from remarrying during that period.¹⁶ In the case of *Mayaki vs Nda*,¹⁷ the Court of Appeal held that the Holy Qur'an prohibits a woman observing her Iddah from remarrying during that period because during the Iddah, the marriage is understood to be merely dormant but not ended, as there is room for reconciliation between the husband and wife. Also, a man is forbidden to marry a woman who is observing Iddah for the law still affixes the stamp of marriage on her. Any marriage contracted within the Iddah period is a nullity.¹⁸

All the four schools unanimously agreed that in both revocable and irrevocable divorced where the woman is pregnant, she is entitled to maintenance such as food, clothing and lodging during Iddah.¹⁹ This is based on the verse of the Qur'an that says:

æÄä Bâ ÆæáÇÊ Íóäúáð ÝÇäÝÞæÇ Úáíää ÍÊì íÖÚä Íääää ...

Meaning

... And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden. Qur'an 65:6

However in revocable divorce, even if she is not pregnant she still entitled to maintenance.²⁰ Imam Abu Hanifa did not differentiate between the pregnant and non-pregnant woman. He says all divorced women are entitled to maintenance during Iddah because all are to wait for prescribed periods and all are prohibited²¹ from contracting fresh marriages.

According to Imam Malik and Shafi'i, an irrevocably divorced woman who is not pregnant is entitled to lodging only,²² but not to other items of maintenance.²³ But if she is pregnant, she should be maintained she should not come out of her house until she delivers her child.²⁴

In case of Iddah of death whether a woman is pregnant or not, she is not entitled to maintenance. This is for the fact that by the death of her husband his ownership of property is subject of inheritance by his heirs.²⁵

A woman observing Iddah should not be turned out of her matrimonial home or leave on her own accord.²⁶ But there are divergent views by scholars on the going out of women in Iddah. It is the opinion of Imam Malik that a woman who is observing Iddah can go out of her matrimonial home during the day to buy necessity of life like food, fetching water or sell some things in order to get money to sustain her where there is no one to support her financial or help her, whether she is widow or divorced.²⁷

¹⁵ Abdul-Rahman Al-Jazairi, op. cit., p. 383

¹⁶ Al-Qur'an 2:235, see also the case of *Mayaki vs Nda* (1993) 3 FAWLR Pt. 280 p. 313 at 315

¹⁷ Ibid

¹⁸ Shamsuddin Muhammad Dazraqi, *Hashiyah Dazraqi*, (ND), Vol. II, Darul Fikr Beirut, pp. 213-159.

¹⁹ Sheikh M.T. El-Nimari, *Personal Status in Islam*, (Unpublished Manuscript), p.204

²⁰ Ibid p. 205

²¹ Ibid

²² Emphasis mine

²³ Sheikh M.T. El-Nimari, op. cit., p. 205, and Qur'an 65:5

²⁴ As-Sayyid Sabiq (ND), op. cit., p. 216

²⁵ Ibid and see Abdul Rahman Al-Jaizari, op. cit., p. 426.

²⁶ See Qur'an 65:1

²⁷ As-Sayyid (ND) op. cit., p. 215

The jurists added that she should not go out in the night except to attend to very serious matters, and that wherever she goes she must come back to sleep in her house.²⁸ In a revocable divorce, Imam Shafi'i opines that she should not go out at all, that the irrevocably divorced woman can go out during the day. But Imam Hanafi holds that both revocable and irrevocable should not go out, it is only the widow who is permitted to go out during the day and part of the night but must come back to sleep in her house.²⁹

In a situation where her husband died away from her or where the husband did not leave her in a house of his own or the husband died leaving her without inheritance or the other inheritors got her out of the shares of inheritance. Here, she is entitled to move out during Iddah to either return to her family or rent an apartment if she is able to or perform her Iddah wherever she desires.³⁰

These are exemptions to the general rule that a woman must observe her Iddah in the house where her husband had died. The Qur'an has said in relation to this that:

وَالَّذِينَ يَدْعُونَ إِلَى فِتْنَةِ يَحْيَىٰ ۚ وَالَّذِينَ كَفَرُوا ۚ لَئِنْ لَمْ يَنْتَهِ عَنِ فِتْنَتِهِمْ لَنَرْجِفَنَّ فِي قُلُوبِهِمُ الرَّجْلَ ۚ فَيَتَلَفَعُوا فِيهَا ۖ فَيَكْفُرُوا بِمَا كَانُوا يَكْفُرُونَ ۚ

Meaning:

Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence; But if they leave (the residence) there is no blame on you for what they do with themselves, provided it is reasonable, and Allah is, Exalted in power, Wise. Surah Baqara 2:240

A woman observing Iddah is thus prohibited from traveling for any purpose even for pilgrimage, visit to either congratulate or condole anyone.³¹

As to the mode of dressing for a divorced woman who is in Iddah, there is no specific prescribed mode of dressing for her. But Shariah has disallowed a woman who is mourning the death of her husband from dressing gorgeously. It is in fact obligatory for a woman to abstain from adornment during Iddah.³² That is, she should not wear fine or coloured clothes or ornaments like ear rings, finger rings, jewelries, collyrium (eye) etc, that will attract the attention of men to her. She is only enjoined to wear black dressing as allowed by Imam Malik.³³ It was narrated that 'Aishah and Hafsa, wives of the Prophet (S.A.W) reported that the Apostle of Allah (S.A.W) said:

It does not befit a woman who believes in Allah and the Last Day to mourn for anybody dead and abstain from adornment for more than three nights except for the husband.³⁴

In addition, a woman who is observing Iddah on the death of her husband may use collyrium if she should fear ailment of the eyes or any other medicine even though it

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid, pp. 214-215.

³¹ Abubakar b. Hasan Al-katsinawiy (MD), *As-holul Madarik*, Darul Fikr, Beirut, vol.II, p.188

³² Imam Muslim (1993), *Sahih Muslim*, Rendered into English by Dr. Mahmud Mafraji, Dar el-Fikr, Beirut, vol.II p.123

³³ Imam Abul-Walid Muhammad Al-Qutabi, op. cit., p.190

³⁴ Prof. Mohammed Rahimuddin (1985), *Muwatta Imam Malik*, Taj Company, New Delhi, p.270

may contain scent³⁵. Imam Malik agreed that she can only use it in the night and not during the day.³⁶

The expiration of Iddah marks the end of marital union between the husband and his wife in Islamic Law. Therefore, Iddah in the case of divorce is three months³⁷ while it is four months and ten days in the case of death of the husband.³⁸ But where the woman was pregnant whether the Iddah is divorce or death, then Iddah ends with the delivery by her of the child.

Where the woman is pregnant, her Iddah ends with the delivery by her of the child³⁹ even if it is before the burial of her late husband.⁴⁰ But a pregnant divorced woman's Iddah expires on delivery or on completion of four months and ten days which ever come later.⁴¹

II. TYPES OF IDDAH

There are different types of Iddah prescribed by the Holy Qur'an and Hadth of the Prophet (S.A.W.) with respect to the duration of each.

Iddah for Menstruating Women is Three Courses.

This is to say that she will observe three period of courses. The Qur'an says:

ⱡÇāãØøáÞÇÊð íÊÑÈÕä ÈÃäÝÓää ÈáÇËË ÞÑæðð

Meaning:

Divorced women shall wait concerning themselves for three monthly period. Al-Qur'an 2: 228

The above verse of the Qur'an refers to the Iddah of Menstruating women who are divorced. The Qur'an further emphasize that:

íÇioðãÇ ÇääÊio ÆÐÇ ØáÞÊã ÇääÓÇÁ ÝØáoÞæää áÜÏÊää
ⱡÃíÕæÇ áÜÏË ⱡÇáÊÞæÇ Çääã ÑÈøßã

Meaning:

O Prophet! When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord Al-Qur'an 65:1

Here, the pronouncement of the divorce should allow the woman to make proper counting of the period. The woman will start the observation of the Iddah immediately the divorce is pronounced without losing any time.

A divorced woman whose marriage has been consummated and who usually menstruates have to wait for three periods from the moment of her divorce. She is not allowed to remarry until the period expires.⁴²

³⁵ Ibid p.271 and Imam Abul-Walid Muhammad Al-Qurtabi, op. cit.,
³⁶ Ibid
³⁷ Al-Qur'an 2:228
³⁸ Al-Qur'an 234
³⁹ Al-Qur'an 65:4
⁴⁰ Prof. Muhammad Ralimuddin, op. cit., pp.265-266
⁴¹ Abdul Rahman Al-Jazairi, op.cit., p.386
⁴² Sheikh M.T. El-Nimairi, op. cit., p. 199

Nafi reported that ‘AbdAllah b. Umar divorced his wife during menstruation in the time of the prophet (S A W). Umar b. al-Khattab asked the Prophet (S.A.W) on the matter. The Prophet (S. A. W) replied: Ask him to take her back and wait until the period of menstruation is over, until she get menstruated again and gets clean. After that, it is open to him to keep her or divorce her. If she is to be divorced, he is not to cohabit with her during her cleanliness. This is the *Iddah* that the Lord has commanded about in divorce.⁴³

In another vein, A’isha, the Mother of the Faithful, terminated the Iddah of her niece Hafsa, daughter of ‘Abd al-Rahman b. Abu Bakr Siddiq, when her third menstruation began. Ibn Shiāb said: I spoke of this to ‘Amrah, daughter of ‘Abd al-Rahmān who said that ‘Urwah b. Zubair had spoken the truth. The people quarreled with A’ishah in this respect and said: Verily, the Exalted Lord commands the divorced women to restrain themselves until three periods of cleanliness.⁴⁴

However, the Jurists differed with respect to the period. Some understood it to be the time of blood (*Hayd ĤiÖ*) that is when the woman is menstruating and some take it to be the time of purity (*Thur ØãÑ*).

Imam Malik, Imam Shafī’i and Imam Hanbali agreed that the period mean the time of cleanliness (purity). This is in line with the opinions of some companions of the Prophet (S. A. W) namely A’ishah, Ibn Umar and Zaid Ibn Thabit.⁴⁵ But Imam Abu Hanifa took this word to mean the time of menstruation. This opinion follows the understanding of the companions like Abubakar, Umar, Ibn Abbass Ibn Mas’ud and Abu Musa Al-Ashari.⁴⁶

Therefore, Iddah Period is three purities (*tuhr*) or three blood (*hayd*) and not three months as widely believe by some Muslims. This differs according, to the nature of women, but majority have their menses every month.⁴⁷ The menses must be full, even if the duration is brief.⁴⁸

Iddah for Non-Menstruating Women is Three Months.

The Holy Qur’an says:

اَلَّذِيْنَ اَتٰى مِنْكُمْ مِنْ الْمَرْءِ اَنْ يُّنْفِقَ مِنْ مَّا رَزَقَهُ مِنْ جَدِّهِ اَوْ اٰثَرِهِ فَاُولٰٓئِكَ لَنْ يَكُنَ لَهُمْ اِيْدٰهُمْ عَلَيْهِمْ اَلْوَلٰٓئَةُ حَتّٰى يَنْفِقُوْا ۚ

Meaning:

Such of your women as have passed the age of menstruation, for them the prescribed period, if you have any doubt, is three months. And let the same period be the waiting period of those who have not yet menstruated. Al-Qur’an 65:4

This type of Iddah, refer to the following group of people:

- (i) The old women who has passed the age of menstruation.
- (ii) The young girls or women who have not started menstruating.⁴⁹

⁴³ Prof. Muhammad Rahmuddin, op, cit., p.258
⁴⁴ *Ibid.*
⁴⁵ Sheikh M.T. El-Nimari, op, cit., p200
⁴⁶ *Ibid.*
⁴⁷ *Ibid.*
⁴⁸ Abdul Rahman Al-Jazairi op, cit., p.381
⁴⁹ Sheikh M.T. El-Nimari, op, cit., p203

Iddah for Pregnant Women

According to the Qur'an

وَالَّذِينَ هُمْ عَنْ صَلَاتِهِمْ سَاهَوْنَ لَا يُؤْخَذُ بِهِمْ لِيُحْمَلُوهُنَّ أَوْ يُنْسَوْنَ ۚ وَلَا يَجْنَحُ عَلَيْهِنَّ شَيْءٌ مِمَّا سَفَهْنَ بِهِنَّ إِذَا هُنَّ حَامِلَاتٌ ۖ وَلَوْلَا إِحْسَانُ رَبِّكَ إِتَّخَذَ لَكَ لَسَانَ عَذَابٍ ۚ فَذَرْنَهُنَّ حَتَّى يَضَعْنَ ثَمَرَهُنَّ وَلَا تُؤْخَذُ بِهِنَّ شَيْئًا ۚ

Al-Qur'an 65:4

For the pregnant women their prescribed time is that they lay down their burden. Al-Qur'an 65:4

Therefore, Iddah of pregnant woman ends with her delivery. The majority of the jurists held that the Iddah of a pregnant expires immediately after delivery, even if it is before the burial of her late husband.⁵⁶ Another view is that the Iddah of a pregnant divorced woman will expire on delivery or on completion of four months and ten days whichever come later.⁵⁷

Iddah for a Wife Whose Husband is Missing

Islamic law is not specific on the issue of Iddah of the wife of a missing husband (*Mafqud*). But it was reported from the Prophet (S.A.W) that:

Sa'id Ibn Al-Musayyab reported that Umar Ibn

Al-Khattāb said; if a woman's husband is missing and she does not know his whereabouts, she should wait for four years, beginning from the date when news about him stopped.

And after completion of four year she should sit in Iddah for four months and ten days. After that period she is free to remarry.⁵⁸

This *hadith* of the Prophet (S.A.W) provides for a woman to first wait for four years after which she can embark on the observation of *Iddah* of four months and ten days.

Iddah of Other Types of Women

There are other types of women who are enjoined to observe Iddah with some conditions and may be exonerated for some reasons. They are:

- (i) **Slave:** If the master of a slave girl dies, she is not enjoined to observe Iddah according to Imam Abu Hanifah.⁵⁹ But Imam Malik said that:

It reached him from Sa'id Ibn Al-Musayyab and Sulaiman Ibn Yasar who said: When the husband of a slave girl should die, her period of Iddah is two months and five days.⁶⁰

Where the slave-girl attains freedom or has child or children for her master husband, then this slave-girl should observe *Iddah* for four months and ten days like a free woman.⁶¹

⁵⁶ Abdul Rahman Al-Jazairi op, cit., p.386, see also Professor Muhammad Rahimuddin, op, cit., p.266

⁵⁷ Abdul Rahman Al-Jazairi op, cit., p.386

⁵⁸ Professor Muhammad Rahimuddin op, cit., p.257

⁵⁹ Imam Abul-Walid Muhammad Al-Qurtabi, op, cit., p.100 and p.320

⁶⁰ Professor Muhammad Rahimuddin, op, cit., p.268

⁶¹ Ibid

This means that observation of Iddah is compulsory under Islamic Law. But we found that observation of Iddah is taken with levity in our society particularly Iddah of divorce. Today, most women observe their Iddah either at their parent's house, in the house of the new suitor who she intends to marry or not observing it at all. This idea is indeed a violation of the law and it is totally against the injunction of Almighty Allah who is the Great Law Giver and who prescribes the best anti-dote for His creations. He knows the best.

Now, a question readily comes to one's mind and that is who is to be blamed, the parties, the society or the judiciary who has the wherewithal to enforce the law with respect to Iddah but refused to do so. Why are the courts handicaps? This and some other reasons we shall be looking at. The factors, which make the observation of Iddah difficult,

- (i) Poverty/lack of maintenance.
- (ii) Lawlessness
- (iii) Ignorance
- (iv) Hostility by the husband in divorce
- (v) Erosion of western culture into Islamic law
- (vi) Inability of Court to enforce its Judgment

These factors will be discussed altogether.

Poverty is one major problem militating against the observation of Iddah in our society. Islamic law did not recognize poverty as a reason for not observing Iddah. This is because during the Iddah period a woman can go out to fend for herself for necessity.⁷⁶ Like wise Islamic law mandated the husband to maintain his divorced wife and that is why it says Iddah must be observed in the husband's house. Even, it is allowed that the woman in Iddah of death can be maintained from what her husband left behind.

Lawlessness and ignorance are not excuses in law. A lot of Muslims are aware of Iddah but they take the provisions of Islamic law on Iddah with levity because the law did not prescribe a direct sanction for its non-observant.

Hostility is another factor. The husband may be hostile to her to the extent that the wife may find it difficult to continue to stay in his house. Also in a situation where the ground of divorce is lack of maintenance, the wife may not be able to withstand this.

Divorce Directly Pronounced

The Prophet (S.A.W) was reported to have said: "Divorce is connected with men and *Iddah* is connected with women".⁷⁷ As a general rule the husband has always been empowered to pronounce divorce provided that he is adult and conscious. According to the Qur'an:

اِنْ شَاءَ الرَّجُلُ مِنْ نِسْأِهِ طَلَقًا فَهُوَ عَلَيْهِ جُنَاحٌ مِثْلُ مَا عَلَى الْمَرْءِ طَلُقَ نِسْأَهُ
اِنْ شَاءَ الْمَرْءُ مِنْ نِسْأِهِ طَلَقًا فَهُوَ عَلَيْهِ جُنَاحٌ مِثْلُ مَا عَلَى الرَّجُلِ طَلُقَ نِسْأَهُ

اِنْ شَاءَ الرَّجُلُ مِنْ نِسْأِهِ طَلَقًا فَهُوَ عَلَيْهِ جُنَاحٌ مِثْلُ مَا عَلَى الْمَرْءِ طَلُقَ نِسْأَهُ
اِنْ شَاءَ الْمَرْءُ مِنْ نِسْأِهِ طَلَقًا فَهُوَ عَلَيْهِ جُنَاحٌ مِثْلُ مَا عَلَى الرَّجُلِ طَلُقَ نِسْأَهُ

⁷⁶ Ibid p.7

⁷⁷ Professor Muhammad Rahimuddin, op. cit., p.261

Meaning:

O prophet? When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses,⁷⁸ nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are the limits set by Allah:... Al-Qur'an 65:1

This is the particular verse that empowered husbands to pronounce divorce therefore, we can infer from the above verse of the Qur'an that:

- (i) that men can divorce women
- (ii) at their prescribed periods
- (iii) count their periods
- (iv) not turn them out of their houses

In this case, divorce should be pronounced by the husband when her menstruation begins. She should not cohabit with her during the cleanliness.⁷⁹ Then she will observe her Iddah for three periods this must be done in the husband's house till she completes her period of Iddah. After the third menstrual period she will become *bain* from her husband and he will not have the option of taking her back.⁸⁰

Divorce Not Directly Pronounced

Separation is an indirect divorce but not all separation can be taken to be a divorce. But where there is separation for a long period of time, the woman may seek divorce and she will thereafter observe Iddah of three period of cleanliness.

Mālik reported that he heard Ibn Shihāb saying that the *Iddah* of a divorced will be counted by menstrual periods and cleanliness even if a long time should elapse.⁸¹

⁷⁸ Emphasis mine

⁷⁹ Professor Muḥammad Rahimuddin, op. cit., p.259

⁸⁰ *Ibid*

⁸¹ *Ibid*